



PATENT

IN THE U.S. PATENT AND TRADEMARK OFFICE

Appellant: Subramanian VASUDEVAN et al.
Application No.: 10/632,813
Art Unit: 2419
Conf. No.: 4600
Filed: August 4, 2003
Examiner: Brian T. O'Connor
For: METHOD OF CONTROLLING REVERSE LINK TRANSMISSION
Atty. Dkt. No.: 29250-0001056/US

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Date: July 20, 2009 (Monday)
(July 18, 2009 being a Saturday)

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Sir:

This is an Appeal Brief in response to the Final Office Action mailed January 9, 2009, and the Advisory Action mailed June 12, 2009, pertaining to Claims 1, 3-11, and 13-25. A Notice of Appeal from this Final Rejection was timely filed on May 18, 2009. Appellant submits herewith their Brief on Appeal as required by 37 C.F.R. §41.37 along with the appropriate governmental fees as required by 37 C.F.R. §41.20(b)(2).

I. 37 C.F.R. §41.37(c)(1)(i) - REAL PARTY IN INTEREST:

The real party in interest is Lucent Technologies Inc.

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II. 37 C.F.R. §41.37(c)(1)(ii) - RELATED APPEALS AND INTERFERENCES:

There are no pending Appeals related to this application.

III. 37 C.F.R. §41.37(c)(1)(iii) - STATUS OF CLAIMS:

Claims 1, 3-11, and 13-25 are pending in this application, with claims 1, 11, 13, 17, 18, and 22 being in independent form. Claims 2, 12, and 26 have previously been cancelled. Each of claims 1, 3-11, and 13-25 remain finally rejected and are being appealed.

1. Claims 1, 3-5, 7, 11, 13, 14, 17, 18, 22, and 23 are rejected under 35 U.S.C. §103(a), as being unpatentable over U.S. Patent 6,574,211 to Padovani et al. ("Padovani") in view of U.S. Patent 7,215,653 to Kim et al. ("Kim").
2. Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of the article entitled "Distributed Resource Allocation for DS-CDMA based Multi-media Wireless LANs," 21 October 1998, IEEE Proceedings of MILCOM 1998, pg. 583-588 to Lal et al. ("Lal").
3. Claims 8-10, 15, 16, 19-21, and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of U.S. Patent Publication 2003/0093364 to Bae et al. ("Bae").
4. Claim 25 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of U.S. Patent Publication 2004/0203397 to Yoon et al. ("Yoon").

Claims 1, 3-11, and 13-25 are being appealed.

IV. 37 C.F.R. §41.37(c)(1)(iv) - STATUS OF AMENDMENTS:

An Amendment Under 37 C.F.R. §1.111 was filed October 16, 2008, and entered by the Examiner. An After Final Request for Reconsideration under 37 C.F.R. §1.116 was filed on May 18, 2009. The Request for Reconsideration did not amend the claims and was not entered. The Claims Appendix reflects claims 1, 3-11, and 13-25 as listed in the October 16, 2008 submittal.

V. 37 C.F.R. §41.37(c)(1)(v) - SUMMARY OF CLAIMED SUBJECT MATTER:

The following explains the subject matter set forth in each claim argued on appeal by way of example embodiments in the specification by page and line number, and in the drawings, if any, by reference characters only to satisfy 37 C.F.R. §41.37(c)(1)(v). This concise explanation relies on example embodiments from the specification to describe the claims; however, the claims recite subject matter not limited to these example embodiments. Independent claims 1, 11, 13, 17, 18, and 22 are argued on appeal and discussed below.

A. General Overview of Patent Application

A method of controlling reverse link transmissions that permit concurrent operating in both a scheduled transmission mode and a rate control scheduling mode is described. In a scheduled transmission mode, transmissions are scheduled by having the base station send a schedule grant message with an explicit instruction for the mobile station to transmit. The grant for a scheduled transmission designates the mobile station that is to transmit as well the transmission format (data rate, frame/packet duration, and transmission power) the mobile station is to employ. In a rate control scheduling mode, the base station sends a rate control directive or instruction, which is typically a one bit

transmission, that can be either broadcast to all mobiles in the cell/sector (common rate control) or transmitted individually to mobile stations (dedicated rate control). See page 1, line 11 through page 2, line 15 of the specification.

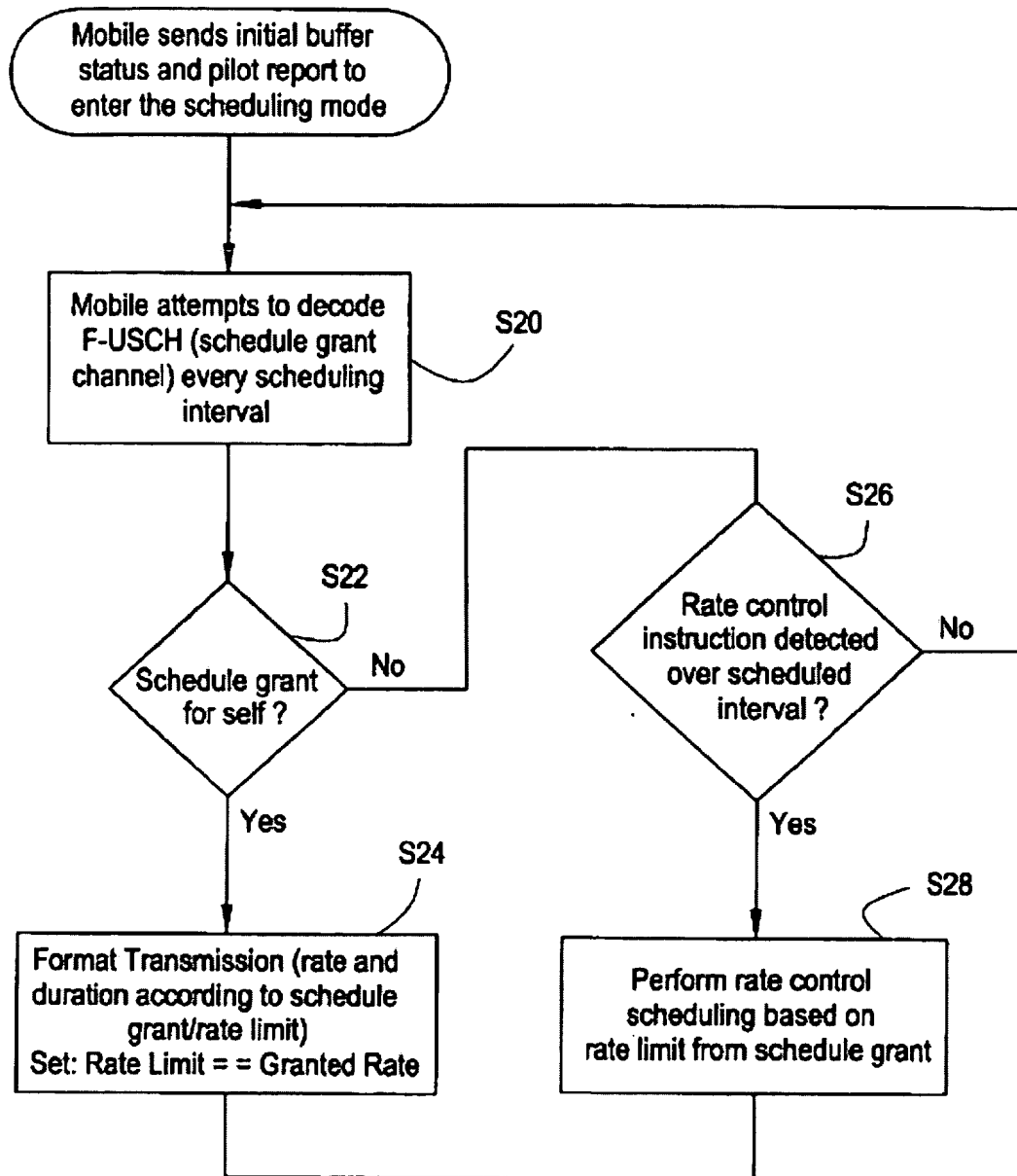
The two modes have a cooperative functional relationship that reduces the transmission power and/or bandwidth needed on the forward link to schedule mobile transmissions. In many cases, a reduced amount of information may be sent on the forward link in order to schedule a mobile's transmissions. See page 3, lines 1-9 of the specification.

In one embodiment the scheduled transmission mode is used to schedule a transmission and set a rate limit from which the rate control scheduling mode operates. Namely, a mobile station interprets a rate control bit with respect to the rate limits set by the last scheduled grant message received. Alternatively, the mobile station transmits, in response to a rate control instruction, based on a rate of a previous transmission made by the mobile station in response to a previous scheduled grant message. See page 3, lines 10-18 of the specification.

In another embodiment, the scheduled grant message overrides a common rate control instruction. In this embodiment, the available load at the base station is used to determine whether to send one or more mobile stations respective scheduled grant messages which override the common rate control instruction for these mobile stations. See page 3, lines 19-24 of the specification.

FIG. 2, reproduced below, illustrates the operational process performed at a mobile station according to a first embodiment.

FIG. 2



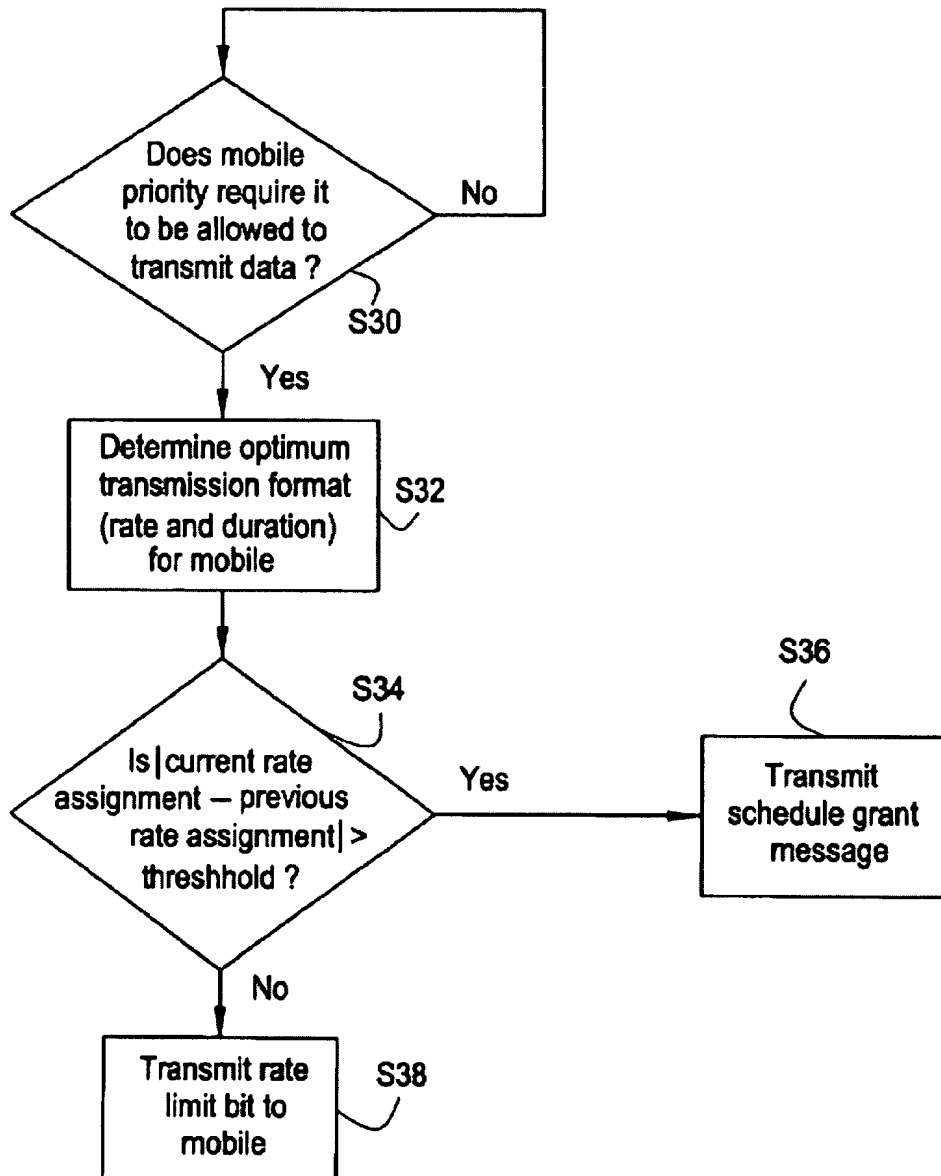
As shown in FIG. 2, after the mobile station sends the initial buffer status and the pilot report to enter the scheduling mode, the mobile station monitors the Forward Link Uplink Scheduling Channel ("F-USCH") and attempts to decode the F-USCH every scheduling interval in step S20. Then, in step S22, the mobile

station determines if the decoded schedule grant message is for itself. If so, then in step S24 the mobile station performs a transmission according to the transmission format (rate, duration, etc.) set in the schedule grant message, and will set the rate limit as that indicated by the schedule grant message. See page 12, line 23 through page 13, line 7 of the specification.

If in step S22 the mobile station does not determine that a schedule grant message is intended for itself, then in step S26, the mobile station monitors the F-UCACH for a rate control instruction. If a rate control instruction is sent during the scheduling interval, then the mobile station uses the rate limit from the previous schedule grant message as the rate limit for performing a transmission according to the rate control scheduling method. Alternatively, the rate control scheduling method employed may, for example, be any of the above-discussed embodiments. For instance, the rate control could be performed with respect to the previous rate limit if the previous transmission is made in response to the rate control bit, and/or the adjustments to the rate limit set by the previously received schedule grant can be cumulative so that all rate control bits received between the current transmission instant and the previously received schedule grant are used to determine the current rate limit. If no rate control instruction is received in step S26, then processing returns to step S20. Processing also returns to step S20 after steps S24 and S28. See page 13, lines 8-24 of the specification.

Next, the operational process at the base station will be described with respect to Fig. 3 shown below.

FIG. 3



As shown, the base station uses any well-known method to prioritize the scheduling of transmissions by mobile stations, and determines in step S30 if the priority established for the mobile station permits scheduling of transmission by the mobile station. Once the priority of the mobile station permits scheduling transmission, the base station determines in any well known manner the optimum transmission format (rate, duration and power) for the mobile station transmission in step S32. See page 14, lines 10-18 of the specification.

Then, in step S34, the base station determines if an absolute value of the currently determined rate minus the previous rate (i.e., rate limit) assigned to the mobile station is greater than a predetermined threshold. Namely, the base station determines if the change in assigned rate limit exceeds a threshold amount. If so, then the base station schedules transmission of the mobile station according to the scheduled transmission mode by sending a scheduling grant message over the F-USCH in step S36. If the change in assigned rate limit does not exceed the threshold amount, then the base station schedules transmission of the mobile station according to the rate control scheduling method by sending a rate control instruction in step S38.

B. Independent Claim 1

Claim 1 recites a method of controlling reverse link transmission at at least one mobile station comprising "first scheduling a reverse link transmission by at least one mobile station by sending a scheduled grant message accorded to a scheduled transmission mode protocol." This reads on the method described in the specification on page 7, line 20 to line 17 on page 8. Claim 1 further recites "the scheduled grant message providing the at least one mobile station with approval to transmit at a specified rate." This reads on the method described at page 8 in the

specification at lines 14-25 and page 6 at lines 17-25. Claim 1 also recites "the scheduled grant message further establishing a rate limit for subsequent transmissions based on a rate control scheduling mode protocol." This reads on the method described in the specification at page 8, lines 17-25 and page 6, lines 17-page 7 line 6.

C. Independent Claim 11

Claim 11 recites a method of controlling reverse link transmission by at least one mobile station, comprising "scheduling a reverse link transmission by at least one mobile station by sending a schedule grant message according to a scheduled transmission mode protocol." This reads on the example method described in the specification at page 7, line 20-page 8 line 25. Claim 11 further recites "the schedule grant message providing the at least one mobile station with approval to transmit at a specified rate." This reads on the method described in the specification at page 8, lines 14-25 and page 6, lines 15-25. Claim 11 also recites "the scheduled grant message resetting a subsequent rate limit for transmissions based on a rate control scheduling mode protocol." This reads on the method described in the specification at page 6, lines 15-25.

D. Independent Claim 13

Independent claim 13 recites a method of making reverse link transmission comprising "transmitting based on a rate limit based on a rate control scheduling mode protocol set by a previously received scheduled grant message ... if a rate control instruction is received." This reads on the method described in the specification on page 13 at lines 10-22. Claim 13 also recites the scheduled grant

message is "sent by a scheduled transmission mode protocol." This reads on the method described in the specification on page 6, at lines 15-17.

E. Independent Claim 17

Claim 17 recites a method of making reverse link transmission comprising "transmitting based on a rate of a pervious transmission made in response to a previously received schedule grant message ... if a rate control instruction is received, wherein the rate control instruction is based on a rate control scheduling mode protocol." This reads on the method described in the specification at page 13, lines 10-22. Claim 17 also recites a "scheduled grant message based on a scheduled transmission mode protocol." This reads on the method described at page 6, lines 15-17.

F. Independent Claim 18

Claim 18 recites a method of controlling reverse link transmission by at least one mobile station including "overriding a common rate control instruction previously received by the at least one mobile station in a previous schedule grant message by sending a schedule grant message." This reads on the method described on page 17 of the specification at lines 8-12. Claim 18 further recites that the scheduled grant message is "based on a rate control scheduling mode protocol for the at least one mobile station." This reads on the method described in the specification at page 6, lines 15-17. Claim 18 further recites "receiving a transmission from the at least one mobile station based on the scheduled grant message." This reads on the method described in the specification at page 9, lines 14-21. Claim 18 further recites that the "scheduled grant message [is] sent by a

scheduled transmission mode protocol.” This reads on the method described in the specification at page 6, lines 15-17.

G. Independent Claim 22

Independent claim 22 recites a method of controlling reverse link transmission by at least one mobile station including “first transmitting, at a mobile station, according to a scheduled grant message instead of a common rate control instruction.” This reads on the method described at page 9, lines 15-17. Claim 22 further recites “the scheduled grant message providing the at least one mobile station with approval to transmit and establishing a rate limit for subsequent transmissions based on a rate control scheduling mode protocol.” This reads on the method described in the specification at page 6, lines 17-25.

**VI. 37 C.F.R. §41.37(c)(1)(vi) - GROUNDS OF REJECTION TO BE REVIEWED
ON APPEAL**

Rejection of claims 1, 3-5, 7, 11, 13, 14, 17, 18, 22, and 23 under 35 U.S.C. §103(a), as being unpatentable over U.S. Patent 6,574,211 to Padovani et al. ("Padovani") in view of U.S. Patent 7,215,653 to Kim et al. ("Kim").

Rejection of claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of the article entitled "Distributed Resource Allocation for DS-CDMA based Multi-media Wireless LANs," 21 October 1998, IEEE Proceedings of MILCOM 1998, pg. 583-588 to Lal et al. ("Lal").

Rejection of claims 8-10, 15, 16, 19-21, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of U.S. Patent Publication 2003/0093364 to Bae et al. ("Bae").

Rejection of claim 25 under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of U.S. Patent Publication 2004/0203397 to Yoon et al. ("Yoon").

VII. 37 C.F.R. §41.37(c)(1)(vii) - ARGUMENT

Claims 1, 3-5, 7, 11, 13, 14, 17, 18, 22, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,574,211 to Padovani et al. ("Padovani") in view of U.S. Patent 7,215,653 to Kim et al. ("Kim"). The Applicant respectfully traverses this rejection for the reasons detailed below.

According to the new Examination Guidelines for Determining Obviousness under 35 U.S.C. § 103 in view of the Supreme Court decision of *KSR International, Co. v. Teleflex, Inc.* 550 U.S. 398 (2007) it is stated that the proper analysis for a determination of obviousness is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts. The

key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious. An Office Action must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. See 72 Fed. Reg. 57526, 57528-529 (Oct. 10, 2007).

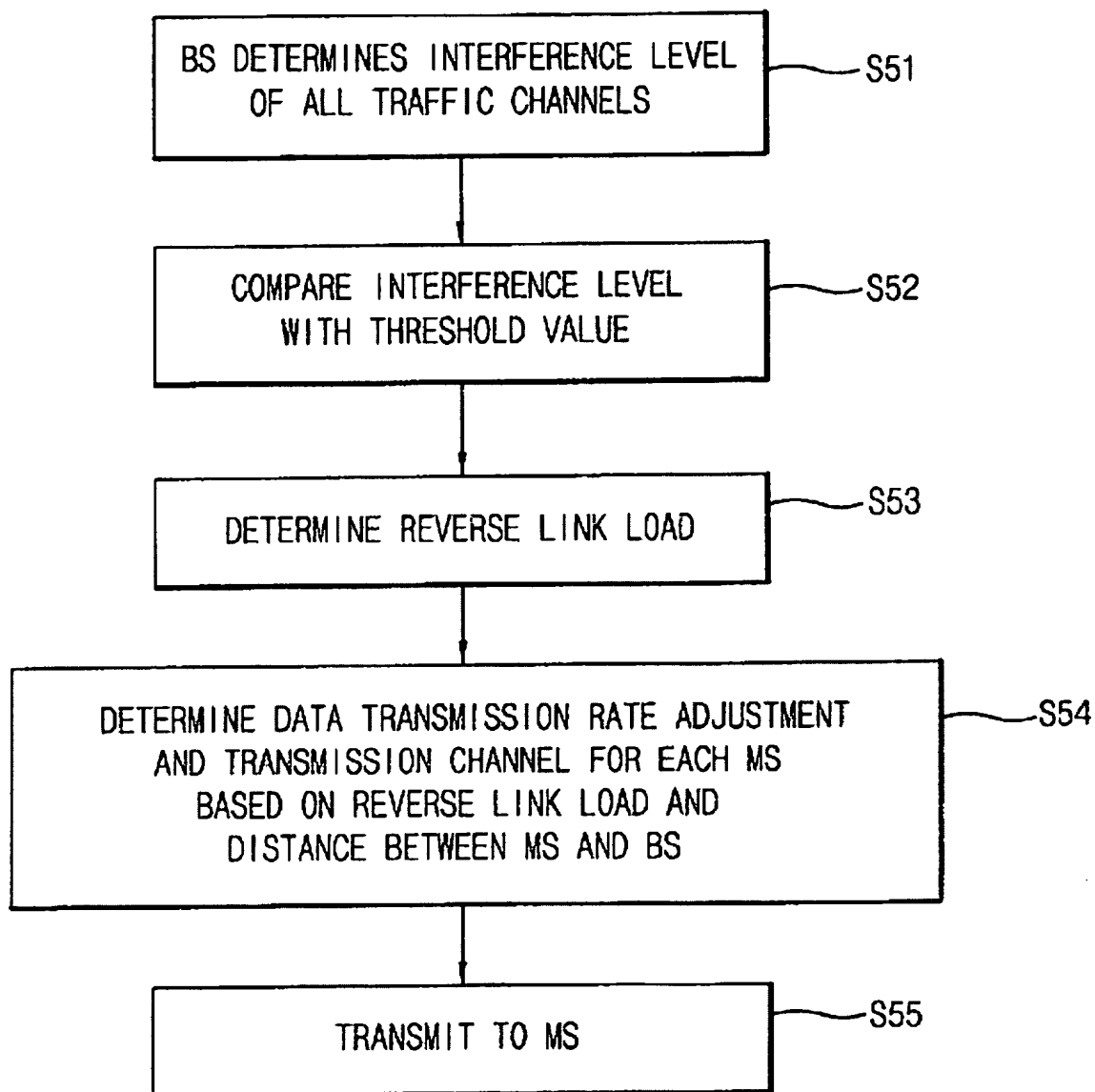
The Applicant asserts that neither Padovani nor Kim, either separately or in combination, teach or suggest all of the limitations set forth in the claims, nor has there been a clear articulation made of why the differences between the prior art and the claims would have been obvious to one of ordinary skill in the art.

On pages 2 and 3 of the final Office Action mailed January 9, 2009, the Examiner admits that Padovani does not disclose that the grant sent from the base station to the mobile station will establish a rate limit for later transmission from the mobile station and have a specified rate provided by the grant message and a rate control scheduling mode protocol. In an attempt to cure the insufficiencies of Padovani, the Examiner cites to Kim.

During a telephonic interview with the Examiner conducted on April 28, 2009, the Examiner, in explaining his rejections of the claims, indicated that the "rate control scheduling mode protocol" was described by Kim at step S54 of FIG. 5 of Kim. The Examiner further alleged that step S54 described "a rate control scheduling mode protocol."

Upon careful review of Kim, and in particular step S54 of FIG. 5 pointed out by the Examiner during the interview conducted, the Applicant disagreed that the cited references render the claims obvious. FIG. 5 of Kim is reproduced below.

FIG. 5



As shown in FIG. 5, step S54 of Kim and discussed in column 9, lines 40-47, Kim describes transmission data rate adjustment information determined by the

reverse link load and information regarding distance from each mobile to the base station. This is different than what is claimed. For example, claim 1 recites a method including "the scheduled grant message further establishing a rate limit for subsequent transmissions based on a rate control scheduling mode protocol."

Kim does not cure the insufficiencies of Padovani. At best, Kim describes determining a data transmission rate adjustment based on a reverse link load and a distance between the mobile station and the base station. Kim does not, nor is it alleged to, teach sending scheduled grant messages. Therefore, neither Padovani nor Kim, either taken separately or in combination, teach, suggest, or otherwise render obvious a method where the scheduled grant message further establishes a rate limit for a subsequent transmission based on a rate controls scheduling mode protocol as recited in independent claim 1. The remaining independent claims, claims 11, 13, 17, 18, and 19 recite similar language. Because Kim does not cure the insufficiencies of Padovani, the Examiner has not set forth a *prima facie* case of obviousness for independent claim 1. Independent claims 11, 13, 17, 18, and 22 recite similar language and are patentable over the cited references for the same reasons set forth above with respect to claim 1.

In response to the above arguments, an Advisory Action mailed June 12, 2009 maintains the rejections and alleges that Kim discloses a base station sending a message to a mobile station at a periodic interval. In supporting this assertion, the Advisory Action cites column 14, lines 25-30 of Kim. While the Advisory Action is not clear, it appears that the Examiner is considering the message to a mobile station sent at a periodic interval as described at column 14, lines 25-30 to render obvious the language of claim 1 "first scheduling a reverse link transmission by at least one mobile station by sending a schedule grant message according to a scheduled transmission mode protocol."

The Applicant respectfully disagrees. At column 14, lines 25-30 of Kim reproduced below, Kim describes a base station receiving an MS_PRI value reported from the mobile in a periodic manner.

"The base station receives the MS_PRI value reported from the mobile in a periodic manner or whenever the channel conditions of the mobile change, or directly calculates the MS_PRI value for updating thereof. Here, the MS_PRI value is initially set at 0 and updated thereafter (S70)."

The MS_PRI value denotes the probability of causing interference to other cells as indicated at column 13, lines 49-55 of Kim reproduced below.

"In equation (2), the MS_PRI value in the term " $\alpha \cdot \text{MS_PRI}$ " denotes the probability of causing interference to other cells. If the MS_PRI value is small (i.e., when there is a high probability of causing interference to other cells), the MS_RCV value becomes large."

The MS_PRI value is not a scheduled grant message according to a scheduled transmission mode protocol as recited in claim 1. Further, the Examiner has not established why the MS_PRI value, which denotes the probability of causing interference to other cells, would render obvious to one skilled in the art "sending a schedule grant message according to a schedule transmission mode protocol" as recited in claim 1.

Further, the Advisory Action mailed June 12, 2009 alleges that "[t]he message from the base station to the mobile stations sets a rate control bit that each mobile station must follow when transmitting data." To support this assertion, the Advisory Action cites column 15, lines 33-36 of Kim.

The Applicant respectfully disagrees with this assertion. A careful review of the cited portion of Kim reveals that column 15, lines 33-36 reproduced below does not teach or suggest what is claimed.

"Then, the base station generates an RCB for each mobiles based on the following conditions using the MS_RCV value,

the BS_RCV value, and the MS_IAB value received from the respective mobile.”

As quoted above, Kim describes a base station generating a rate control bit for each mobile based on the following conditions using the MS_RCV value, the BS_RCV value, and the MS_IAB value received from the respective mobile. Depending on what these values are, the rate control bit is set to increase, decrease, or remain unchanged. A mere instruction to increase, decrease, or remain unchanged a rate control bit is hardly establishing a rate limit for subsequent transmissions based on a rate control scheduling mode protocol as recited in independent claim 1.

In sum, Kim fails to cure the insufficiencies of Padovani for at least two reasons. First, the MS_PRI value does not teach, suggest or otherwise render obvious a scheduled grant message of claim 1. Second, merely setting a rate control bit to increase, decrease or remain unchanged does not teach, suggest, or otherwise render obvious “establishing a rate limit” as set forth in independent claim 1. For at least these reasons, the Applicant respectfully asserts that the arguments set forth in the final Office Action mailed January 9, 2009 and the Advisory Action mailed June 12, 2009 fail to establish a *prima facie* case of obviousness of claim 1.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of the article entitled “Distributed Resource Allocation for DS-CDMA based Multi-media Wireless LANs,” 21 October 1998, IEEE Proceedings of MILCOM 1998, pg 583-588 to Lal et al. (“Lal”). The Applicant respectfully traverses this rejection for the reasons detailed below.

Claim 6 is dependent upon claim 1 which has been shown to be patentable over the cited references for the reasons set forth above. Claim 6 is patentable at least by reason of its dependency.

Claims 8-10, 15, 16, 19-21, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of U.S. Patent Publication 2003/0093364 to Bae et al. ("Bae"). The Applicant respectfully traverses this rejection for the reasons detailed below.

Claims 8-10, 15, 16, 19-21, and 24 are dependent upon one of the independent claims described above. Because the independent claims are patentable for the reasons set forth above, claims 8-10, 15, 16, 19-21, and 24 are patentable at least by reason of their dependency.

Claim 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Kim and further in view of U.S. Patent Publication 2004/0203397 to Yoon et al. ("Yoon"). The Applicant respectfully traverses this rejection for the reasons detailed below.

Claim 25 is dependent upon claim 22. Claim 22 is patentable over the cited references for the reasons set forth above. Claim 25 is patentable at least by reason of its dependency.

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VIII. CONCLUSION

Appellant respectfully requests the Board to reverse the Examiner's rejection of claims 1, 3-11, and 13-25 and allow each of these claims.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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IX. 37 C.F.R. §41.37(c)(1)(viii) - CLAIMS APPENDIX:

1. (Previously Presented) A method of controlling reverse link transmission by at least one mobile station, comprising:

first scheduling a reverse link transmission by at least one mobile station by sending a schedule grant message according to a scheduled transmission mode protocol, the schedule grant message providing the at least one mobile station with approval to transmit at a specified rate, the schedule grant message further establishing a rate limit for subsequent transmissions based on a rate control scheduling mode protocol.

2. (Cancelled)

3. (Previously Presented) The method of claim 1, further comprising:

second scheduling a subsequent reverse link transmission by the mobile station by sending a rate control instruction according to the rate control scheduling mode protocol.

4. (Original) The method of claim 3, wherein the first scheduling step sends the schedule grant message over a first forward control channel and the second scheduling step sends the rate control instruction over a second forward control channel.

5. (Original) The method of claim 3, wherein the rate control instruction indicates to transmit at the rate limit.

6. (Original) The method of claim 5, wherein a failure to send a rate control instruction indicates not to transmit.

7. (Original) The method of claim 3, wherein the rate control instruction indicates one of an increase and a decrease in the rate limit.

8. (Original) The method of claim 3, further comprising:
sending another schedule grant message that resets the rate limit.

9. (Original) The method of claim 3, further comprising:
determining a change in rate limit between a previously scheduled transmission and a currently scheduled transmission; and performing the second scheduling step when the determined change does not exceed a threshold amount.

10. (Original) The method of claim 1, further comprising: sending another schedule grant message that resets the rate limit.

11. (Previously Presented) A method of controlling reverse link transmission by at least one mobile station, comprising:

scheduling a reverse link transmission by at least one mobile station by sending a schedule grant message according to a scheduled transmission mode protocol, the schedule grant message providing the at least one mobile station with approval to transmit at a specified rate, the schedule grant message resetting a subsequent rate limit for transmissions based on a rate control scheduling mode protocol.

12. (Cancelled)

13. (Previously Presented) A method of making reverse link transmission, comprising:

transmitting based on a rate limit based on a rate control scheduling mode protocol set by a previously received schedule grant message sent by a scheduled transmission mode protocol if a rate control instruction is received.

14. (Original) The method of claim 13, wherein the previously received schedule grant message is received over a first channel and the rate control instruction is received over a second channel.

15. (Original) The method of claim 13, further comprising: reducing the rate limit if no rate control instruction is received; and increasing the rate limit if a rate control instruction is received.

16. (Original) The method of claim 13, further comprising: adjusting the rate limit based on an accumulation of rate control instructions received since the previously received schedule grant message.

17. (Previously Presented) A method of making reverse link transmission, comprising:

transmitting based on a rate of a previous transmission made in response to a previously received schedule grant message based on a scheduled transmission mode protocol if a rate control instruction is received, wherein the rate control instruction is based on a rate control scheduling mode protocol.

18. (Previously Presented) A method of controlling reverse link transmission by at least one mobile station, comprising:

overriding a common rate control instruction previously received by the at least one mobile station in a previous schedule grant message by sending a schedule grant message based on a rate control scheduling mode protocol for the at least one mobile station; and

receiving a transmission from the at least one mobile station based on the scheduled grant message sent by a scheduled transmission mode protocol.

19. (Original) The method of claim 18, further comprising:

first determining whether to override a common rate control instruction for a mobile station based on an available load at a base station; and

performing the overriding step for a mobile station when the determining step determines to override the common rate control instruction for the mobile station.

20. (Original) The method of claim 19, wherein the determining step determines whether to override the common rate control instruction for the mobile station based on the available load at the base station, an estimated increase in the available load if the mobile station ignores the common rate control instruction and an estimated reduction in the available load if the mobile station transmits in response to a schedule grant message.

21. (Original) The method of claim 19, further comprising:

second determining, for each mobile station in a set of mobile stations to be scheduled, whether to consider the mobile station for overriding the common rate control instruction based on a rate supported by the mobile station and a rate limit set forth according to a previous common rate control instruction; and

performing the first determining step with respect to the mobile stations determined in the second determining step.

22. (Previously Presented) A method of controlling reverse link transmission by at least one mobile station, comprising:

first transmitting, at a mobile station, according to a schedule grant message instead of a common rate control instruction, the schedule grant message providing the at least one mobile station with approval to transmit and establishing a rate

limit for subsequent transmissions based on a rate control scheduling mode protocol.

23. (Previously Presented) The method of claim 22, wherein the transmitting step is a retransmission of a negative-acknowledged transmission sent in response to the schedule grant message.

24. (Original) The method of claim 22, further comprising:

second transmitting, subsequent to the first transmitting, according a common rate control instruction and a rate of transmission in response to a previous common rate control instruction.

25. (Original) The method of claim 22, further comprising:

setting a secondary pilot level based on a weighted average of the secondary pilot levels corresponding to possible transmission rates.

26. (Cancelled)

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X. 37 C.F.R. §41.37(c)(1)(ix) - EVIDENCE APPENDIX:

As no evidence was submitted and relied upon in this Appeal, this Appendix contains no evidence pursuant to 37 C.F.R. §41.37(c)(1)(ix).

XI. 37 C.F.R. §41.37(c)(1)(x) - RELATED PROCEEDINGS APPENDIX:

As there are no Related Proceedings associated with this Appeal, no additional information is being supplied in an Appendix pursuant to 41.37(c)(1)(x).